Withdrawal/Redaction Sheet

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DOC	TYPE	DATE	PAGES	CLASS.	CLOSED
1	Memorandum	06/07/1988	6		01-15-2003

NSC #: WHORM Subject #: R 3/20/06 NLSR97-006/4 #54
To: Robert Zoellick
From: Judith Bello
Subject: re US-Canada free trade agreement
Restriction : FOIA(b)1

DOC	TYPE	DATE	PAGES	CLASS.	CLOSED
2	Memorandum	06/13/1988	6		01-15-2003

NSC #: WHORM Subject #: R " " #55
To: Stephen Danzansky
From: Judith Bello
Subject: re US-Canada Free Trade Agreeement
Restriction : FOIA(b)1

DOC	TYPE	DATE	PAGES	CLASS.	CLOSED
3	Talking Points/Briefing Paper	ND	1		01-15-2003

NSC #: WHORM Subject #: R " " #56
To:
From:
Subject: Suggested Talking Points for Call to Derek Burney
Restriction : FOIA(b)1

COLLECTION: Baker, Howard H. Jr.: Files

SERIES: I. Subject File

TITLE: Canadian Free Trade

OA/ID NUMBER: 1 BOX NUMBER: 1 Folder #: 17 of 17

Restriction Codes

Presidential Records Act - [44 U.S.C. 2204(a)]
PRA-1 -National Security Classified Information.
PRA-2 -Relating to the appointment to Federal Office.
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FOIA(b)(8) -Release would disclose information concerning the regulation of financial institutions.
FOIA(b)(9) -Release would disclose geological of geophysical information concerning wells.

DOC	TYPE	DATE	PAGES	CLASS.	CLOSED
4	Talking Points/Briefing Paper	ND	2		01-15-2003

NSC #: WHORM Subject #: R 3/21/06 NLSF97-066/4-#57
To:
From:
Subject: Talking Points for Phone Call to Derek Burney
Restriction : FOIA(b)1

DOC	TYPE	DATE	PAGES	CLASS.	CLOSED
5	Memorandum	07/31/1987	1		01-15-2003

NSC #: WHORM Subject #: R 10/25/10 F97-066/4#58
To: Howard Baker and Frank Carlucci
From: James Baker
Subject: re July 10 memo
Restriction : FOIA(b)1

DOC	TYPE	DATE	PAGES	CLASS.	CLOSED
6	Talking Points/Briefing Paper	ND	2		01-15-2003

NSC #: 90179 WHORM Subject #: R 3/21/06 NLSF97-066/4 #59
To:
From:
Subject: Suggested Points Mr. Baker May Wish to Raise at NSC on Canada (w/notations, and notes on back of page)

Restriction : FOIA(b)1

COLLECTION: Baker, Howard H. Jr.: Files

SERIES: I. Subject File

TITLE: Canadian Free Trade

OA/ID NUMBER: 1 BOX NUMBER: 1 Folder #: 17 of 17

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OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

June 15, 1988

MEMORANDUM

To: Ambassador Yeutter
Secretary Baker

From: Judith H. Bello JHB

Subject: U.S.-Canada Free-Trade Agreement Constitutional Question

Summary

This memorandum provides updated background information and talking points for your meeting with Chairman Peter Rodino (and possibly Congressman Kastenmeier) tomorrow at 11 a.m. on the Free-Trade Agreement constitutional issue.

Background

We continue to focus our efforts on this issue principally at the House Judiciary Committee. Last Friday Ambassador Yeutter persuaded Congressman Kastenmeier to help us out, and his staff (David Beier, who has been extraordinarily helpful) then agreed to support the attached compromise provision. It includes:

(1) the Finance/Ways and Means/Judiciary-approved provision, which requires Commerce and the ITC to take action not inconsistent with binational dispute settlement panel decisions;

(2) a "Packwood-style" fallback, which provides that if the above is held unconstitutional by the courts, then the President is authorized to accept, as a whole, panel decisions and, upon acceptance, Commerce and the ITC are required to take action not inconsistent with them; and

(3) an executive order for issuance January 1, which provides that if the provisions of the fallback become effective, then the President accepts, in whole, any such panel decision.

Kastenmeier called Rodino yesterday to urge his support for this approach. Although Rodino received his remarks favorably, in a subsequent conversation with Rodino's staffer (Elaine Mielke, the Chief Counsel), Kastenmeier was advised that the Chairman will never agree to it.

Other possible messengers to Rodino include:

- Congressman LaFalce, who was scheduled to have dinner with Rodino last night at the Italian Embassy, and agreed to urge Rodino's support for this compromise (we don't have a report back from him);

- Senator Bradley, whose staff has urged him to call Rodino, if Bradley believes such a call would be well received (the staff does not know whether the Senator has made or will make this call); and

- Congressman Fish, the ranking Republican on the Judiciary Committee, who is likely to call today.

In response to prompting by Senator Packwood at a Senate Finance Committee meeting last Friday, Chairman Bentsen agreed to "look kindly" on a new proposal on this issue, along the lines of the original Packwood-Finance position. As a result, we expect support from Finance.

Concerning Ways and Means, on the other hand, the staff is quietly urging Rodino's staff to "hang tough." We had expected Chairman Rostenkowski to defer to his Judiciary Committee. We therefore suggest that Ambassador Yeutter call the Chairman today, so that he can indicate in good faith in the meeting tomorrow that Rostenkowski has not raised any independent concern in this regard.

Attachments:

Suggested Talking Points
Compromise Proposal
June 7 Memorandum

cc: M. Peter McPherson
Robert B. Zoellick

Suggested Talking Points

- As you know, we're here to try to eliminate the last roadblock to a bill to implement the U.S.-Canada Free-Trade Agreement. When we achieve a satisfactory resolution of the constitutional issue, the other few remaining issues will fall into place. Lloyd Bentsen has already indicated the Finance Committee will "look kindly" on a compromise proposal on the constitutional issue. We don't expect Danny Rostenkowski to practice constitutional law, but rather to follow his Judiciary Committee's lead on this issue. So right now, the implementation of this historic Agreement depends in very large part on you, Mr. Chairman, and your committee.

- To enable us to wrap up the implementing bill, we urge you to support a compromise position on the implementation of binational panel dispute settlement decisions under Chapter 19 of the U.S.-Canada Free-Trade Agreement.

- We realize that you and your staff listened patiently to the Administration's arguments, but disagreed with them.

- We assure you, Justice doesn't like this compromise. But we are willing to disregard their strong concerns, for the sake of the Agreement.

- The language approved by the "conference" presents the greatest possible risk of a successful constitutional challenge under the Appointments Clause. Most Administration lawyers agree there is a risk, even though they disagree amongst themselves about the degree of the risk.

- But why take any risk with such an historic economic agreement? As Senator Packwood said, he would bet $100 that you all are right, but not $10,000 and <u>not</u> the whole bill.

- The compromise we are suggesting, despite Justice's objections, includes the language Judiciary supports (requiring Commerce and the ITC to take action not inconsistent with panel decisions). It then provides a fallback; if the above formulation were held unconstitutional, then the President would be authorized <u>only</u> to accept (or reject) panel decisions as a whole and, upon acceptance (which will happen in every single case), Commerce and the ITC would be required to take action not inconsistent with the panel decision. Your staff agrees with our view that this formulation precludes:

    - Justice from pursuing its alleged "hidden agenda" to exercise Presidential authority over independent agencies, and

    - the President from introducing extraneous political issues into antidumping and countervailing duty cases.

- In addition, we offer an executive order, providing that if the fallback comes into play, the President accepts the panel decision, in whole, in every case. The beauty of the executive order is that we expect its effect would be to deny standing to <u>anyone</u> to challenge this part of the implementing bill. As a result, the "going-in" provision Judiciary supports is likely to be invulnerable to a challenge and therefore to remain in effect forever and a day.

- We think this compromise gives the Hill everything it needs, simply with a fallback insurance policy (unlikely ever to be necessary, in view of the executive order) that prevents any jeopardy to the Agreement.

- And we stress that a compromise is essential. Even if you are right and a constitutional challenge fails in the end, the mere filing of such a challenge will provoke political turmoil in Canada. They value Chapter 19 and the binational panels above all else in the entire Agreement. In our judgment, any uncertainty whether they will get the benefits for which they bargained could jeopardize the entire Agreement.

    - To illustrate the extreme degree of Canadian concern, the entire FTA negotiations very nearly fell apart exclusively over this issue. Prime Minister Mulroney sent his Chief of Staff and two ministers down here to work out a compromise in the antidumping and countervailing duty law area. The binational panel review provided in Chapter 19 is what the two of us personally worked out, in order to get the negotiations back on track last fall.

- In case you aren't very familiar with the fast track, let us also stress what a precious but fragile instrument it is. You may think that you needn't compromise, because the President can submit whatever bill he wants to, anyway. But we <u>must</u> keep faith with the Congress, or we will jeopardize not only the Canada Agreement, but also the fast track and the Uruguay Round of multilateral trade negotiations that depends on it.

- (If raised:) If, as part of this compromise, you insist that Justice and the President remain silent regarding this constitutional issue, we will do whatever it takes to either persuade or prevail over the Attorney General.

- We firmly believe this is a reasonable compromise. In the year of your retirement from the institution you have served so well, we hope you will help us implement the Agreement, which so manifestly serves the national economic interest.

"(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904.

"(A) If a determination is referred to a binational panel or extraordinary challenge committee under the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

"(B) In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (4)(A) and (H), then the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission, within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering

authority or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

Executive Order _____ of January 1, 1989

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988, in the event that the provisions of subsection 516A(g)(7)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1516a(g)(7)(A)), are held unconstitutional under the provisions of subsection 516A(g)(4)(A) and (H) of that act, then, pursuant to the provisions of subsection 516A(g)(7)(B), I hereby accept on behalf of the United States, in total, any decision of a binational panel or extraordinary challenge committee under Article 1904 of the United States-Canada Free-Trade Agreement.

THE WHITE HOUSE

Const.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

June 7, 1988

MEMORANDUM

To: Ambassador Yeutter
Secretary Baker

From: Judith H. Bello JHB

Subject: U.S.-Canada Free-Trade Agreement Constitutionality Question

Summary

This memorandum provides background information on the constitutional issue in the President's bill to implement the U.S.-Canada Free-Trade Agreement. It recommends an urgent meeting with key Congressional committee chairmen to try to obtain a more acceptable result than the Finance-Ways and Means-House Judiciary conference outcome in this regard.

Background

As you know, we have not succeeded in persuading the Finance, Ways and Means or Judiciary Committees of the Administration's concerns under the Appointments Clause with respect to implementation into domestic law of binational panel dispute settlement decisions under Chapter 19 of the Agreement. While we nonetheless could have lived with the Finance Committee/Packwood "either-or" formulation,[1] Senator Packwood himself signaled a hasty retreat from it after the Department of Justice made a presentation at the conference. In light of the Packwood retreat and the strong opposition of House Judiciary (represented by Congressman Kastenmeier), the conferees agreed to the original Bentsen proposal, which presents the greatest possible problem under the Appointments

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[1] The "either" was Chairman Bentsen's proposal that such decisions be automatically implemented in domestic law directly by Commerce and the International Trade Commission. The "or" fallback--which would have taken effect only if the "either" was struck down by the courts as unconstitutional--was the Administration's original proposal, authorizing (but not requiring) the President to direct Commerce, Customs and the ITC to take action pursuant to such decisions.

Clause.[2]

Post-Conference Developments

Secretary Baker spoke with Chairman Rodino and Congressman Brooks following that conference, to elicit open-mindedness on this issue. USTR and Treasury representatives then met with House Judiciary staff (including the Chief Counsel) to explore possible compromises. The Chief Counsel admitted that the Administration's last offer[3] satisfied House Judiciary's concerns that Justice was using this means of accomplishing its "hidden agenda" of asserting Presidential power over an independent agency, the ITC. In authorizing the President only to "take or leave" binational panel decisions and providing for automatic implementation upon their acceptance (which we contemplate in every case), the President is not given any opportunity in the implementing bill to direct ITC actions or to introduce extraneous concerns into Commerce's administration of the antidumping and countervailing duty laws. However, she remained noncommittal about this proposal, expressed Chairman Rodino's strong opposition to any "either-or" formulation as bad policy, and stressed that the conferees had, after all, concluded their work.

Congressman Kastenmeier's representative, on the other hand, expressed considerable receptivity to a Packwood-type "either-or" formulation, particularly as modified to replace the "or" fallback with the Administration's more recent proposal (limiting the President's authority to accept or reject panel decisions). However, he expressed a hope that the Statement of Administrative Action could set forth criteria for the exercise of Presidential discretion with respect to accepting or rejecting such decisions (which Justice presumably would strongly oppose).

Recommendation

We haven't made any further headway with House Judiciary staff, and time grows ever shorter. Therefore, we recommend that you meet as soon as possible with Rodino, Kastenmeier, and their Republican counterparts.

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[2] While lawyers within the Administration disagree in assessing the risk involved in the Bentsen proposal, most (although not all) agree with Justice that there is some risk. In Justice's view, the risk is overwhelming.

[3] As a result of a Baker-Baker-Yeutter-Meese meeting on May 24, we agreed to propose that the President be authorized only to accept or reject binational panel dispute settlement decisions. Upon acceptance, Commerce and the ITC automatically would implement the decisions. We further tentatively agreed as a fallback that we could accept the Packwood proposal.

Talking Points

- We come to you today, to ask you to reconsider one issue whose outcome was particularly difficult for us: the constitutionality surrounding implementation of binational panel dispute settlement decisions under Chapter 19 of the Agreement.

- We realize that you and your staff listened patiently to Justice's arguments, but disagreed with them.

- But the conference outcome in this regard put us in a very messy position indeed. Your committees adopted the formulation that presents the greatest possible risk of a successful constitutional challenge under the Appointments Clause. Most Administration lawyers agree there is a risk--even if they do not share Justice's assessment of the degree of such risk.

- But concerning the most critical part (from Canada's perspective) of such an important agreement, why take any risk? The beauty of Senator Packwood's and the Finance Committee's approach was that you got what you wanted (and what Canada most likes), and the Administration got an insurance policy that the Agreement will not founder on the basis of a constitutional challenge to the implementing legislation.

- After all, if you are right that there is no constitutional issue, Chairman Bentsen's proposal prevails forever and a day. The "or" fallback simply remains a useless appendage.

- But just suppose you are wrong, Justice is right, and there is a constitutional problem. Why not ensure that some safety net is available if some future court strikes down the Bentsen proposal?

- Particularly since we are imposing on you to reopen this issue, we are prepared to be quite flexible ourselves. How about if we agree to an "either-or" formulation, but substitute the most recent Administration offer as the "or" fallback? Under that proposal, the President would be authorized only to accept or reject panel decisions, not broadly tinker around with them. That ensures that he could not use this means to introduce extraneous issues into Commerce's administration of the AD/CVD laws.

- Further, upon the President's acceptance of the decisions (which we anticipate in every case), Commerce and the ITC would automatically implement the decisions. This ensures that Justice cannot use this provision in pursuit of its allegedly "hidden agenda" to assert Presidential power over

the independent agencies. If the President accepts a panel decision, the ITC straightaway does its thing--without advice, guidance or direction from the Oval Office.

- We think this is a reasonable compromise. It's not perfect, by any means. Justice is no more happy with it than you may be--and probably less so. But unless we come up with something at least face-saving for Justice, you've made it considerably harder for us to prevail over the Attorney General's objections in the Oval Office.

Subs.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

June 7, 1988

MEMORANDUM

To: Robert B. Zoellick

From: Judith H. Bello JB

Subject: Subsidies Provisions in U.S.-Canada FTA

Summary

This memorandum provides background and talking points for Secretary Baker's meeting on Wednesday, June 8, with Canadian Chief of Staff Derek Burney on the subsidies provisions in our legislation and accompanying statement of administrative action to implement the U.S.-Canada Free-Trade Agreement. The essence of Canadian objections to these provisions is that:

(1) Baucus-Danforth will be portrayed in Canada as a new trade remedy;

(2) it applies only to Canada (least-favored-nation treatment);

(3) Canada fears it will lead to substituting 301 for CVD action when the issue is subsidized imports from Canada.

The essence of our response is that including the Baucus-Danforth provisions was politically necessary to avert substantial opposition, and that underneath all the verbiage of these provisions there is no new trade remedy created for Canada nor even any enhanced or expedited process for industries to obtain relief under existing laws.

Background

In the Senate Finance Committee in particular, we faced widespread, strong concern about the Agreement's failure to discipline Canadian subsidies despite declining U.S. tariff protection. While Senators Baucus and Danforth led the chorus (for lead and zinc producers, inter alia), virtually all participating Committee members except Packwood echoed the refrain (e.g., Rockefeller for the coal industry, Daschle for agriculture, Mitchell for the fisheries industries and agriculture, Durenberger for corn growers, Chafee for fisheries industries, Wallop and Armstrong for natural resources, Heinz for everything).

Our initial answer to their concerns was that we would seek greater discipline on subsidies through the Subsidies Working Group process established in the Agreement, and we could include appropriate negotiating objectives and procedures in the implementing bill to emphasize our seriousness and ensure consultations and reports to the Congress. The Members made clear that they wanted that much, but required more. Their initial proposals would have violated the Agreement by requiring section 301 action against domestic subsidies and/or conditioning FTA tariff cuts on achieving greater subsidies discipline.

To address in part their concerns and broaden Congressional support for the Agreement, we agreed (with inter-agency approval) to include negotiating procedures and objectives for subsidies (to which we understand Canada does not object), and some watered down subsidies proposals.

The Baucus-Danforth Proposal

As Baucus himself stressed in introducing his proposal:

> No new trade remedies are established by this amendment. It relies entirely on existing investigation tools and trade remedies. The provision in no way violates the free trade agreement. (emphasis in the original)

The Baucus-Danforth provisions probably make it more likely that U.S. industries will use the information-gathering provisions of existing U.S. trade law (sections 305 and 332). Once information is gathered, we can (but are in no sense required to) self-initiate an investigation under existing section 301 or CVD laws, or the industry can, if it wishes, petition under those laws. But nothing in Baucus-Danforth substitutes for or short-circuits the procedures and requirements for actions or investigations under those existing laws and procedures.

The main points of Baucus-Danforth are as follows (with parenthetical notations of existing law):

- A U.S. industry facing subsidized Canadian competition and whose economic position is deteriorating may ask USTR to identify it as meeting these criteria. **(Already anyone can complain to USTR about Canadian subsidies and seek USTR's assistance.)**

- If USTR so identifies an industry, then USTR:

  - must provide information under section 305--although USTR is not committed to ask the GOC for any information **(current law)**, and/or

  - recommend that the President ask the ITC to conduct a fact-finding study under section 332 of the Tariff Act. **Already industries can get such a study by persuading**

only the Finance or Ways and Means Committee--usually a single Member or friend of a Member suffices--to request a 332 study. Since 1980, the ITC has conducted nearly 15[illegible]h investigations.)

- The bill provides that USTR's decision whether or not to identify an industry "does not in any way prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Department of Commerce, the International Trade Commission, or the Trade Representative under the countervailing duty law or any other trade remedy law." This provision is probably the most important reassurance to Canada that we are not creating new trade remedies or short-circuiting existing laws for Canada.

- If such information is marshalled, USTR and Commerce must review it **(current policy, to be sure)**. USTR must consider whether any action is appropriate under section 301 or any other trade remedy other than the CVD law **(current practice, and certainly an option under current law)**.

- In so doing, USTR must consult with:

  - **the private sector (current law--sections 133 and 135 of the Trade Act);**

  - **Finance and Ways and Means (effectively current law--section 161 of the Trade Act); and**

  - **other agencies (current law--section 132 of the Trade Act and section 242 of the Trade Expansion Act);**

  and USTR may ask the ITC for advice (current law--section 131 of the Trade Act).

- Commerce must consider whether any action is appropriate under the CVD law. (Commerce has never self-initiated a CVD investigation.)

Highlights the Canadians Are Probably Already Aware Of

Lack of Prejudice: After meeting with Canadian Embassy representatives, we obtained conference agreement that, as noted above, the bill will provide that any identification by USTR of satisfaction of the two specified criteria does not in any way prejudice or affect any proceeding, determination or action by the Department of Commerce, International Trade Commission or Trade Representative under the countervailing duty law or any other trade remedy.

Commerce Jurisdiction in CVD Cases: Again after consulting with Embassy representatives, we resurrected a parenthetical phrase

inadvertently deleted by Baucus staffers.[1] This parenthetical ensures that USTR is not being given nor would undertake any new responsibilities under the CVD law.

Improvements Already Agreed, or Which the GOC May Be Unaware

"Or": After a saga of ups and downs, we recaptured the "or" giving us discretion to provide information under section 305 and/or to recommend that the President ask the ITC to conduct a section 332 study. This ensures that absolutely, this is nothing more than a restatement of current law and practice.

Standing: The conference agreed to a Moynihan proposal, that the standing to initiate this new "procedure" would not be any broader than under the CVD law (in other words, stricter standing than under section 301 currently). For example, the coal industry would not have standing to complain of allegedly subsidized Canadian electricity.

Separate Proceedings: Along the same lines, conferees agreed to put in a Committee Report a Bradley provision that no subsidy determination for purposes of the CVD law shall be made without a separate proceeding under the CVD law, providing all interested parties an opportunity to be heard.

Effects on GATT, Subsidies Code, CVD Law: Similarly conferees agreed to a Moynihan proposal to include in the Committee Report a statement that nothing in this new provision alters or affects Title VII (the AD/CVD laws) or U.S. international obligations under the GATT or Subsidies Code.

Use of Neutral Terms: Staff has agreed to use the more neutral terms "positive and negative decisions" rather than the terms of art currently used in section 301 and the CVD law, "affirmative and negative determinations."

Improvements We Might Be Able to Get (But Risk Breaking Some China)

Statement of Preeminence of CVD Law: We could affirm in the statement of administrative action our current policy, which is that the CVD law is the principal, preferred trade remedy with respect to subsidized imports into the U.S. (rather than section 301).

No Requirement for 301, CVD Action: Likewise we could seek agreement to provide in the statement of administrative action that nothing in this "procedure" requires any action under either section 301 or the CVD law. (It is unquestionably true, but ruthlessly exposes the Baucus-Danforth provisions for the fig

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[1] USTR would consider any appropriate action "under section 301 or any other action (other than action under the countervailing duty law)...."

leaf that they are.)

Subsidies Terminology: We could seek a change in the statute to use a more neutral term (such as government assistance) rather than the politically and legally loaded term "subsidy" or "subsidized." However, this change also applies more broadly, so we should not seek it until we are sure the Canadians want it.

Talking Points

- We aren't in a position to be able to delete these provisions, which are too important a political salve to too many potential opponents, particularly in the Senate.

- I also don't see how we could globalize the provisions (make them applicable to third countries), since this is a bilateral bill.

- This "procedure" is nothing more than a fig leaf to meet widespread concerns in our Congress. Its length is inversely proportional to its substance. (It takes a lot longer to say nothing well.)

- It largely only codifies current law and practice. Already anyone can obtain information under section 305, and any industry worth its salt can obtain an ITC 332 study through the Finance or Ways and Means Committee. Big deal!

- Moreover, it could provide useful information for the Subsidies Working Group.

- As a matter of law, USTR already has options under section 301, and Commerce under the CVD law. These options will continue after the FTA enters into force on January 1.

- Washington is already rife with ways to pressure any administration to do things for complaining industries. This new "procedure" is but a tiny, insignificant addition to the gristmill of lobbyists, trade associations, etc., seeking to exert pressure on Executive Branch decisionmakers to help them out.

- Self-initiated section 301 proceedings are quite unlikely after entry into force of the Agreement, because they are so confrontational. Self-initiated CVD actions are even more unlikely; Commerce has never, ever, self-initiated a CVD investigation.

- What is likely to result from the new (at best) "procedure" is identification of priorities for the Subsidies Working Group. Complaining U.S. industries are likely to get priority attention within the Working Group--and justifiably so, since in the interim subsidies continue without adequate discipline but tariffs are gone within 10 years.

- Yes, this is a special "procedure" for Canada alone--but only for the hopefully brief transition period while the Subsidies Working Group negotiates greater subsidies discipline and a substitute set of rules. Moreover, Canada alone of our trading partners reaps the vast benefits of the Agreement. With rights and privileges come some responsibilities. Canada must manfully shoulder this minor, inconsequential responsibility for a brief period, in return for the sweeping, permanent benefits redounding to it and it alone of all U.S. trading partners under the Agreement.

Attachment: Most Recent (June 6) Version
from Senate Legislative Counsel

and Antidumping Code), respectively, taking into account the effects of the Agreement, and

(B) will neither undermine such multilateral discipline nor detract from United States efforts to increase such discipline on a multilateral basis in, or subsequent to, the Uruguay Round of multilateral trade negotiations.

(b) ACTIONS REGARDING SUBSIDIZED CANADIAN PRODUCTS PENDING AGREEMENT.—

(1)(A) Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe that—

(i) imports with which the industry directly competes are being subsidized by the Government of Canada (including provincial governments thereof); and

(ii) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies are developed under Article 1907 of the Agreement;

may request the United States Trade Representative (hereinafter referred to in this section as the ''Trade Representative'') to make a determination regarding

whether there is a reasonable likelihood that both the subsidization described in clause (i) may exist and the deterioration described in clause (ii) may occur.

(B)(i) The Trade Representative, in consultation with the Secretary of Commerce, shall make a determination under subparagraph (A) within 90 days after the date on which the request for the determination is received.

(ii) Any determination by the Trade Representative under subparagraph (A), whether affirmative or negative, does not in any way prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Department of Commerce, the United States International Trade Commission, or the Trade Representative under the countervailing duty law or any other trade remedy law.

(C) If, after the Trade Representatives makes an affirmative determination under subparagraph (A), an entity that is representative of the industry that is the subject of such determination requests information under this paragraph, the Trade Representative shall—

(i) make available to the industry information under the provisions of title III of the Trade Act of 1974,

(ii) recommend to the President that an investigation by the United States International Trade Commission be requested under section 332 of the Tariff Act of 1930 regarding the relevant issues, or

(iii) take actions described in both clause (i) and (ii).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under clause (i) or (ii), or both, as the case may be.

(2)(A) If the Trade Representative makes an affirmative determination under paragraph (1)(A), the Trade Representative, in consultation with the Secretary of Commerce, shall, after—

(i) review of all applicable information,

(ii) compliance with subparagraph (B), and

(iii) consultation with the industry that is the subject of such determination,

decide whether any action is appropriate with respect to the industry under title III of the Trade Act of 1974 (including, but not limited to, the initiation of an investigation under section 302(c) of such Act) or under section 702 of the Tariff Act of 1930 (includ-

ing, but not limited to, initiation of an investigation under section 702(a) of the Tariff Act of 1930).

(B) In deciding under subparagraph (A) what action may be appropriate, the Trade Representative, in consultation with the Secretary of Commerce—

(i) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;

(ii) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(iii) shall coordinate with the inter-agency committee established under section 242 of the Trade Expansion Act of 1962; and

(iv) may ask the President to ask the United States International Trade Commission for advice under section 131 of the Trade Act of 1974.

(C) If any action taken pursuant to subparagraph (A) involves—

(i) the suspension, withdrawal, preventing the application, or refraining from the proclamation of benefits of trade agreement concessions to carry out a trade agreement with Canada, or

(ii) the imposition of duties or other import restrictions on the goods of Canada,

such action shall be applied with respect to the Canadian articles that are found to be subsidized, unless application of the action to other Canadian articles would be more effective.

SEC. 410. EFFECTIVE DATE OF TITLE; TRANSITION PROVISIONS.

(a) EFFECTIVE DATE.—The provisions of this title, and the amendments made by this title, shall take effect on the date on which the Agreement enters into force with respect to the United States.

(b) TERMINATION.—If—

(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force with respect to the United States, and

(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement,

the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

June 13, 1988

MEMORANDUM

To: Steve Danzansky

From: Judith H. Bello JHB

Subject: U.S.-Canada Free-Trade Agreement

Summary

For purposes of the Toronto Economic Summit, this memorandum provides some background information on the status of the U.S.-Canada Free-Trade Agreement, and identifies some problems and proposed solutions.

Status of the Agreement

As you know, President Reagan and Prime Minister Mulroney signed the Agreement on January 2. With respect to legislation to implement it, Ambassador Yeutter and Secretary Baker agreed with Congressional leadership in February that we would include in the bill the President will submit provisions worked out jointly with committees of jurisdiction, provided they are consistent with the Agreement, its fundamental purposes and its implementation.

We have nearly completed that process, and have been able to work out all but three major issues: (1) constitutionality, (2) uranium, and (3) subsidies.

Constitutionality

Article 1906 of the Agreement establishes a binding international obligation to implement decisions of binational dispute settlement panels reviewing final antidumping and countervailing duty determinations. The issue is how to do so in domestic law consistent with the Appointments Clause in Article II of the Constitution.

The Finance-Ways and Means-House Judiciary "conference" rejected the Administration's proposals and adopted an approach that presents the maximum possible problem in this regard. However, Finance has publicly expressed its willingness to reconsider this outcome, and we expect Ways and Means to defer to House Judiciary. We have obtained Rep. Kastenmeier's agreement to help us persuade

Chairman Rodino to adopt a two-part compromise proposal (if the "going-in" mode of implementation were held unconstitutional by the courts, then a "fallback" method would immediately take effect).

Uranium

We agreed to support Senator Domenici's efforts on a uranium legislative package involving inter alia a government buying program and a substantial tax on utilities to pay for a clean up program for waste ("tailings"). However, we agreed we would include it in the bill to implement the Agreement only if all committees of jurisdiction approved it. It seems clear that neither Finance nor Ways and Means will support using the fast track for this purpose. Therefore, when we resolve the constitutional issue, we will advise Senator Domenici that we have been unable to achieve those committees' agreement, and need to proceed with the implementing bill sans uranium.

Subsidies

To assuage widespread concern that the Agreement eliminates tariffs over 10 years without first obtaining increased discipline on Canadian subsidies, we agreed to a new "procedure" that merely uses existing statutory procedures for gathering information (section 305 of the Trade Act of 1974 and section 332 of the Tariff Act of 1930). In so agreeing, we fended off far more draconian proposals (e.g., to delay tariff cuts until subsidies discipline was achieved, or to require the self-initiation of investigations under section 301 of the Trade Act). We also obtained support for the Agreement by its leading opponent, Senator Baucus.

Despite the modesty of this new "procedure," the Canadians were extremely concerned, principally about: (1) its "least-favored-nation" application solely to Canada, and (2) the possibility that it paved the way for use of section 301 rather than the countervailing duty (CVD) law (thus reducing the benefit of Chapter 19 of the Agreement, providing for review of final antidumping and countervailing duty determinations by binational dispute settlement panels).

Last week, Prime Minister Mulroney's Chief of Staff, Derek Burney, met with Ambassador Yeutter and Secretary Baker to say that the Canadians "just couldn't live with" the Baucus subsidies language. In response, the Administration proposed: (1) to "globalize" the new "procedure," making it available with respect to subsidized imports from all countries, and (2) to note in our Statement of Administrative Action (that the President will submit to the Congress along with the bill) that countervailable subsidies are normally to be dealt with by our CVD laws, and that we do not intend to use section 301 for the purpose of circumventing the CVD and Chapter 19 procedures.

Although Senator Danforth (who co-sponsored the original provisions with Senator Baucus) opposes these changes and Chairman Bentsen has some concerns, we are optimistic we can obtain both Finance and Ways and Means agreement to include them.

Problems We Have Taken Care of for the Government of Canada

In our implementing bill and Statement of Administrative Action, we have taken care of a number of Canadian Government concerns, including the following:

- Lobsters: Senator Mitchell proposed and Finance adopted a ban on imports of Canadian lobsters below a minimum size. Ways and Means did not recede, which will allow us to drop this measure (to which Prince Edward Island officials in particular were strongly opposed).

- Subsidies: As noted above, we averted a number of anti-subsidy requirements, and are now seeking Finance and Ways and Means agreement to eliminate the allegedly "least-favored-nation" aspect of the new "procedure" and to affirm that we do not plan to use section 301 to circumvent CVD and Chapter 19 procedures.

- Mandatory Section 301 Action/Investigations: In many cases, we were pressured to include a mandate to act under section 301 or at least to self-initiate an investigation. We avoided all such proposals except one modest proposal by Senator Mitchell.

  The Mitchell measure simply requires to us to do whatever is appropriate in response to GATT-illegal Canadian actions with respect to export restrictions on unprocessed fish or landing requirements replacing such restrictions. (We won a GATT panel complaining about such Canadian West Coast restrictions, but then Trade Minister Carney announced GOC plans to replace the restrictions with landing requirements that may, in fact, be more damaging to trade. Ministers Crosbie and Wilson have assured us that "the landing requirement will be designed in a way that will be consistent with our GATT obligations and provide U.S. processors with access to Canadian fish, while meeting our legitimate conservation requirements.")

- Safeguards: The GOC strongly opposed a Finance Committee provision proposed by Senator Heinz that would have authorized action under the safeguards section 201 of the Trade Act if a surge in imports from Canada "threatened" to undermine the effectiveness of otherwise global import relief provided under that section. Ways and Means opposed and the measure

was deleted.

- AD/CVD Amendments: Canadian embassy representatives told us "there would be no agreement" unless we included in our bill a provision that future amendments to our AD/CVD laws would not apply to Canada unless they expressly so stated. Despite the unanimous recommendation of all staff to drop this proposal, we persuaded Finance and Ways and Means Members to include it.

- Films: To assuage widespread Congressional concerns (spurred by Jack Valenti), we obtained Finance and Ways and Means agreement to modest language in the Statement of Administrative Action only, which is acceptable to Canada. (This problem is caused by Canada's insistence on reserving its right in Article 2005 to take action otherwise inconsistent with the Agreement with respect to cultural industries.)

- Provincial Implementation: In view of widespread Canadian sensitivity about the legal and political ability of the Canadian Government to ensure provincial compliance with the Agreement, we persuaded Ways and Means not to agree to a Finance proposal to refer expressly in our bill to such provincial compliance. The GOC had adamantly opposed any such reference.

- Federal/State Override: At the Canadians' urging, we sought an "override" provision in our bill, so that the Agreement would prevail over any inconsistent federal or state law to the extent of any inconsistency. This provoked the strongest possible opposition of Finance and Ways and Means, since it flew in the face of all precedent under the fast track legislative procedures. The committees felt it was unfair, particularly under the fast track, for the Executive Branch to expect the Congress blanket-fashion to override existing federal laws rather than to propose amendments of any such laws required to comply with the Agreement. With respect to federal law, the bill will include a traditional "underride" clause, specifying that federal law prevails to the extent of any inconsistency with the Agreement (as did the Trade Agreements Act of 1979 implementing the Tokyo Round agreements, and the U.S.-Israel Free Trade Area Implementation Act of 1985).

  However, we obtained a clause expressly overriding inconsistent state law. The corresponding provision in proposed Canadian legislation is woefully weaker, providing only that:

  > nothing in this Act ... limits in any manner the right of Parliament to enact legislation to implement any provision of the Agreement or fulfill any of the obligations of the Government of Canada under the Agreement.

Problems the Canadians Created

Meanwhile, the GOC has taken a number of actions that, in our view, violate the Yeutter-Carney "standstill" agreement not to take actions that make it more difficult to obtain implementation of the Agreement. They include:

- Textile Duty Remission Scheme: Over our objection, the GOC adopted a new duty remission scheme for textiles that our industry opposed. While not a violation of the terms of the Agreement, it made it more difficult for us to obtain implementation here since it stirred up industry opposition.

- Dairy Quotas: Under the Agreement, all tariffs are being phased out over 10 years. To prevent any reduction in the protection afforded to certain processed dairy products (including yogurt, soft frozen yogurt, ice cream and ice milk), the GOC announced it plans to adopt quotas on imports of those products. We consider this action inconsistent with Article XI of the GATT and Article 406 of the Agreement (when it comes into force), and have requested consultations under Article XXII:1 of the GATT.

- Fish: As noted above, the GOC announced it will replace its GATT-illegal West Coast export restrictions on unprocessed salmon and herring with new landing requirements, which may have an even more draconian effect on our processors.

- Plywood: In a January 2 exchange of letters, Minister Carney agreed with Ambassador Yeutter that the Canada Mortgage and Housing Corporation (CMHC) would evaluate C-D grade plywood and decide whether to approve its use in CMHC housing. However, CMHC then failed to implement this agreement. In response to Canada's initial violation of the Agreement (Article 2008), we agreed to include in our implementing bill a provision authorizing the President to reduce U.S. tariffs on plywood and particle-board only when he reports to the Congress "on the incorporation of common plywood performance standards into building codes" in the U.S. and Canada, and "determines that the necessary conditions have been met."

  The GOC complains strongly about this measure in our bill. They claim that we are initiating a violation of the Agreement, rather than responding to their violation.

Suggested General Talking Points

- We are gratified that we are so far along in developing our

implementing legislation.

- As Canadian officials have advised us, they share our relief and appreciation that we have encountered so few problems with our Congress.

- While there are a few issues outstanding, we are optimistic we will resolve them soon satisfactorily.

- We have resolved a number of strong Canadian Government problems with the proposed implementing legislation, fending off such proposals as to: establish lobster import quotas, mandate section 301 actions and investigations, refer to provincial compliance with the Agreement, drop a provision concerning future amendments to the antidumping and countervailing duty laws, delete reference to "threat" in the safeguards implementation, etc.

- Moreover, we are hopeful we can resolve GOC concerns about the subsidies provisions proposed by Senator Baucus, by "globalizing" them (broadening their application to all countries), and affirming our intent not to use section 301 for the purpose of circumventing countervailing duty and Chapter 19 procedures.

- We haven't yet scheduled the President's submission of the bill to the Congress, but expect to do so soon. Congressional leadership has agreed to vote on it during this session, preferably before the August recess.

- We are trying to be helpful in every way possible to the efforts of the Mulroney government to implement the Agreement in Canada.

THE WHITE HOUSE

WASHINGTON

March 3, 1988

MEMORANDUM FOR SENATOR BAKER

FROM: ALAN KRANOWITZ

SUBJECT: Canada Free Trade

Attached is a letter from a bipartisan group of 22 Senators on the Canada Free Trade Agreement. Primarily members of the "Western Coalition," these Senators enumerate specific concerns with the agreement and criticize our consultation procedures, but point out that "there are still measures that can be taken to alleviate these problems". They want to work with us and request a meeting with Administration officials.

As you know, we have already agreed to work with Congress to develop implementing legislation which we will submit in June. Senator Byrd has announced that the relevant committees will consider their part of the package and report to the Finance Committee. Senator Bentsen will head up an informal "task force" to deal with this issue.

We will work with USTR and Treasury to provide an answer to the letter.

United States Senate

WASHINGTON, D.C. 20510

March 1, 1988

The Honorable Ronald Reagan
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to express our concerns regarding the U.S.-Canada trade agreement, and to urge the Administration to work closely with Congress to draft implementing legislation that will eliminate some of the trade distortions and competitive problems created by or ignored in the agreement. Our goal is to move the U.S. and Canada toward a free and open market and establish a "level playing field" for businesses on both sides of the border.

The Administration has called the U.S.-Canada trade agreement a historic accomplishment. We are told that many features of this agreement could serve as a model for future multilateral and bilateral trade agreements. The weaknesses and strengths of this agreement could be greatly magnified as its provisions are copied in other trade agreements. For that reason, we cannot afford to make mistakes or overlook shortcomings. We must work to perfect and refine the agreement, the implementing language, and the policies we pursue as a result of the agreement.

In our view, there is much work to be done. As currently drafted, we have several serious reservations about the U.S.-Canada trade agreement.

We are concerned about the apparent lack of judicial review for countervailing and anti-dumping duty cases. Replacing Article III judges with political appointees raises serious constitutional questions that we would like to explore further. In addition, we request clarification of the Canadian federal government's constitutional power to enforce provincial compliance with the agreement. We would like to discuss U.S. options in the event a province violates the agreement.

The agreement does not provide for free trade between the United States and Canada. Progress is made toward opening markets in some sectors, but a number of Canadian trade barriers and subsidy programs that place U.S. industries at a disadvantage are ignored. By failing to eliminate certain barriers the agreement may actually institutionalize these Canadian trade barriers and impair U.S. remedies to counter them. We are particularly concerned that the U.S. has tied its hands with regard to countering subsidies with U.S. countervailing duty law while obtaining no assurances from Canada that it will discontinue its present subsidy programs or refrain from initiating new ones in the future.

Perhaps it is too late to address this problem completely, but steps can be taken to minimize these problems and build momentum for further market openings. The implementing language for the agreement must be drafted so as to put pressure on both the U.S. and Canada to eliminate subsidy programs and trade barriers that are not covered by the agreement. Without such measures, the agreement could actually become a barrier to truly free trade, and U.S. industries--like non-ferrous metal production, plywood manufacturing, coal mining, and wheat production--would be put at an unfair competitive disadvantage.

Finally, we are concerned that the agreement inadequately addresses the complex trade issues affecting several key U.S. industries, including natural gas production, fisheries, auto parts manufacturing, and uranium mining. Thorough consultation with Congress during the negotiations could have eliminated these problems entirely. But there are still measures that can be taken to alleviate these problems without endangering the agreement.

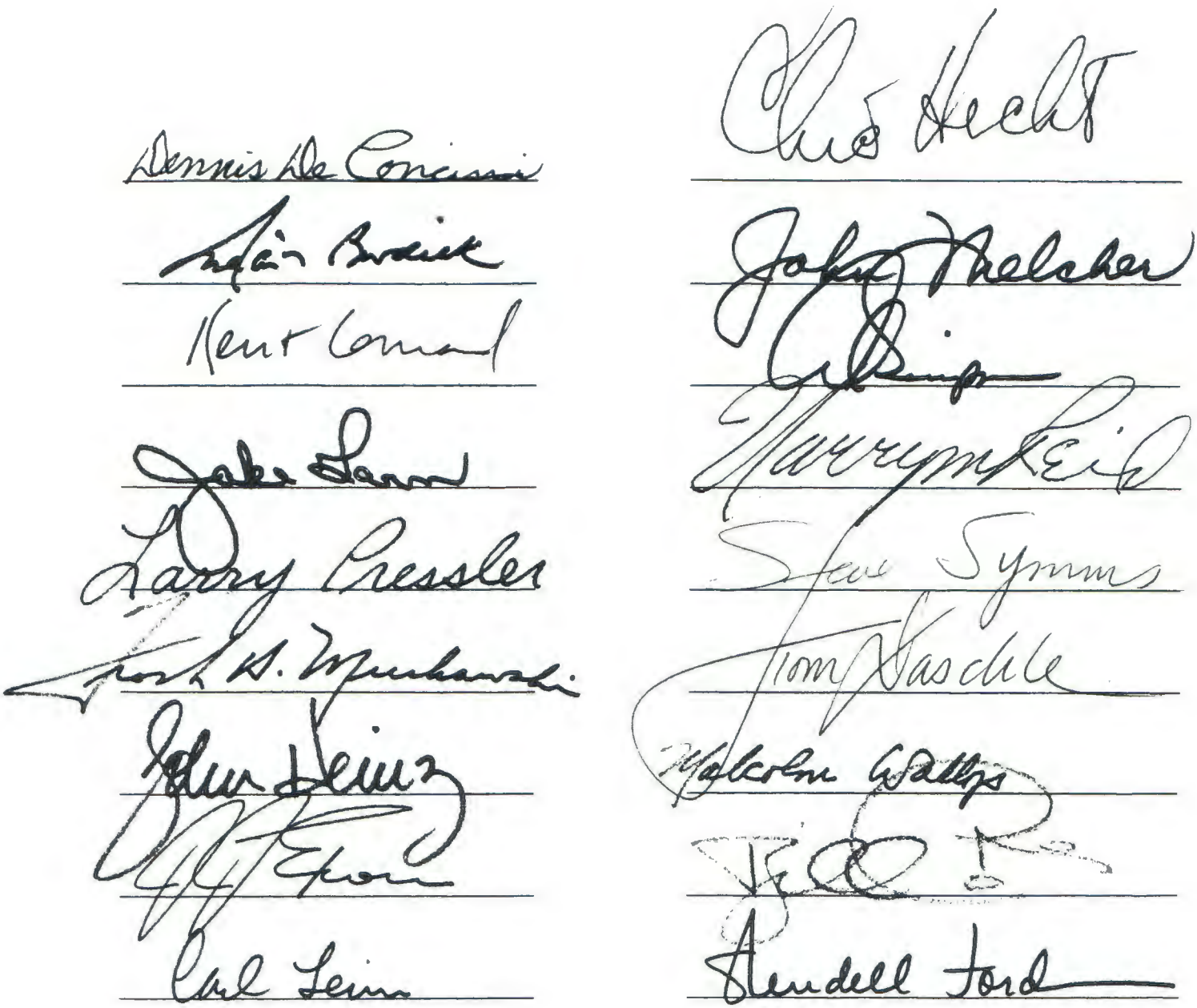
In the spirit of cooperation, we have worked closely with many of the industries with concerns about the agreement--including non-ferrous metal production, plywood manufacturing, wheat production, uranium mining, natural gas production, and coal mining--to address their problems without changing or otherwise undermining the agreement. They range from careful drafting of implementing legislation for the agreement to actions the U.S. government can take unilaterally to level the playing field. For example, we have developed implementing language that would tie the elimination of Canadian subsidies for non-ferrous metal production to the elimination of U.S. tariffs on non-ferrous metal imports. We understand that some of our proposals may require some refinement, but they certainly illustrate that constructive solutions are still possible.

Submitting the U.S.-Canadian trade agreement to Congress under the fast-track process without working with Congress to solve these problems endangers not only this agreement, but the entire fast-track process. It would be a serious mistake to leave Members with concerns about the agreement with no alternative short of amending the fast-track process or opposing the agreement outright.

We look forward to working with the Administration to address these concerns. We would like to arrange a meeting with Administration officials to discuss the issues that we have raised at the earliest possible date.

Sincerely,

cc: Secretary Baker
Ambassador Yeutter



THE WHITE HOUSE

WASHINGTON

January 7, 1988

MEMORANDUM FOR HOWARD H. BAKER, JR.
CHIEF OF STAFF TO THE PRESIDENT

FROM: JAY B. STEPHENS
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Procedures for Congressional Approval of Canada FTA

On January 2, 1988, the President and Canadian Prime Minister Brian Mulroney entered into the U.S.-Canada Free Trade Agreement. The Agreement is scheduled to enter into force on January 1, 1989, provided that the necessary implementing legislation is enacted in each country. This memorandum describes the process for Congressional review of the Agreement.

In summary, the "fast-track" authority requires Congress to act on the Administration's bill to implement the Agreement within 90 legislative days after such legislation is introduced. U.S.T.R. contemplates that the Agreement and implementing legislation will be submitted to Congress sometime between March and June 1988. Because of anticipated recesses and likely early adjournment of this session of Congress, the submission of the Agreement and implementing legislation should not be delayed unnecessarily. The maximum time for Congressional "fast-track" consideration is 90 days, as follows:

a) Agreement submitted and implementing bill introduced	Day 0 (exclude days when relevant House not in session)
b) House committees	Day 45
c) House vote	Day 60
d) Senate committees	Day 75
e) Senate vote	Day 90

If Congress fails to act by January 1, 1989, or within the statutory timeframe, there is no direct sanction. On at least two prior occasions Congress has approved a fast-track Agreement within the prescribed time-frame. We are not aware of any failure of Congress to act within the time limits. If either body of Congress were to ignore its own rules and the statutory scheme, or change its applicable rules, and fail to act within 90 days, Congress could block the Agreement from becoming effective.

Submission of Agreement and Draft Implementing Legislation

As a legal matter, there is no fixed deadline under the "fast-track" authority for the President to submit the Agreement to the House and Senate. 19 U.S.C. § 2112(e)(2). The statute provides only that "after entering into the agreement," the President must transmit a copy of it to the House and the Senate together with the following additional materials:

> a) a draft of an implementing bill;
>
> b) a statement of administrative action proposed to implement such agreement;
>
> c) an explanation how the implementing bill and proposed administrative action change or affect existing laws; and
>
> d) a statement of reasons how the agreement serves the interests of United States commerce, and why the implementing bill and proposed administrative action are required or appropriate to carry out the agreement. Id.

Treasury Secretary Baker and U.S. Trade Representative Yeutter are now in the process of negotiating with Congress on the timing for the Administration to submit the Agreement and draft implementing legislation.

In a December 3, 1987 letter (attached at Tab A), Senate Finance Committee Chairman Bentsen and House Ways and Means Committee Chairman Rostenkowski expressed dissatisfaction regarding the Administration's consultations with Congress before the President signed the Agreement. With regard to future Congressional consideration of the Agreement, the Committee Chairmen are in favor of a relatively slower schedule. They "propose that the Administration not submit a bill to implement the FTA under expedited procedures earlier than June 1, 1988." They point to other pressing items on the Congressional schedule which make it unlikely that the Committees could complete action on the draft bill before then. In the same letter, the Chairmen said their timetable would enable action on the bill to be completed during the 100th Congress.

Secretary Baker and Ambassador Yeutter responded to the Chairmen's letter on December 22 (letter attached at Tab B). Their response expressed concern over any delay in submitting the implementing legislation. They stated "that a substantial amount of work needs to be completed prior to the President's formal submission to the Congress of the agreement, a draft implementing bill and various statements." Secretary Baker and Ambassador Yeutter also expressed their desire to discuss scheduling issues with the Chairmen as soon as convenient.

Prior to submitting the draft implementing legislation, the Administration will coordinate with the Committees in closed

"non-markups" to prepare an acceptable bill. Secretary Baker and Ambassador Yeutter's letter stated that "[w]e have no intention of recommending that the President submit the agreement and implementing bill at such an early date as to preclude a reasonable opportunity for advance cooperation with the Congress."

Procedures for Congressional Fast-track Review

The procedures for review of the Agreement and implementing legislation are set forth at 19 U.S.C. § 2191. It must be noted, however, that these procedures are established "as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, . . . with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House." 19 U.S.C. §2191(a)(1), (2). Accordingly, there is a risk (discussed below) that either House could amend its own rules to circumvent the "fast-track" procedures.

o Same Day Introduction of Implementing Legislation

Under the "fast-track" authority, the text of the Agreement and the draft implementing legislation are formally submitted to Congress by the Administration at the same time. The statute provides that the legislation must be introduced in the House and Senate the day it is submitted, or on the first day thereafter that the respective Houses are in session.

o Committee Referrals

The implementing bill is immediately referred to the appropriate committees of each House.

o Effect of Tariff Provisions

Since the implementing bill would eliminate or phase out tariffs over 5-10 years, it is a "revenue" measure required by the Constitution to originate in the House of Representatives. Accordingly, the Senate may defer its consideration of the bill until it is received from the House; alternatively, the Senate could elect to proceed simultaneously with the House, provided that the vote in the Senate on final passage does not occur until after the bill is received from the House.

o Committee Consideration

The committees in the House of Representatives to which the implementing legislation is referred have up to 45 legislative days (excluding any day on which the House is not in session) to review the bill. If such committees have

not reported such bill at the close of the 45th legislative day following its introduction, they are automatically discharged from further consideration of the bill and it is placed on the House calendar.

o Floor Consideration in the House

A vote on final passage in the House must be taken on or before the close of the 15th legislative day after the bill is either reported by the committees or those committees have been discharged from further consideration.

o Consideration by Senate Committees

The Senate committees to which the bill is referred have a maximum of 15 legislative days to consider the bill after it is received from the House. If it is not reported by the close of the 15th legislative day, those committees are discharged from further consideration.

o Floor Consideration in the Senate

A vote must be taken in the Senate on or before the close of the 15th legislative day after the bill is either reported by the Senate committees or those committees have been discharged from further consideration.

o No Amendments; Limited Debate

No amendment to the implementing bill is in order in either House. Debate on the bill is limited to not more than 20 hours in each House.

In summary, the "fast-track" procedures provide that the implementing legislation will be voted on by both Houses of Congress within 90 legislative days from the date on which the Agreement and bill are submitted.

Possible Departure from the "Fast-Track" Procedures

As noted above, the "fast-track" procedures are guaranteed only to the extent that either House does not amend its own rules. Consequently, either House could reject the "fast-track" at any time by adopting a resolution that is not subject to Presidential veto.

Such a departure from the "fast-track" procedures was threatened during the earlier negotiations with Canada. At that time, the Senate Rules Committee reported a resolution that would subject the maritime provisions of the Canada FTA to amendment in the Senate, thereby nullifying "fast-track" consideration for this issue. The threat of this procedural maneuver was resolved when favorable treatment for the U.S. maritime industry was assured in the final agreement signed by the President. Nonetheless, this

gambit could be a troublesome precedent if other thorny issues arise during the period of Congressional review.

A

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 3, 1987

The Honorable James A. Baker, III
Secretary of the Treasury
Washington, D.C. 20220

The Honorable Clayton Yeutter
U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Mr. Secretary and Mr. Ambassador:

Pursuant to your recent consultations with the Committee on Finance and the Committee on Ways and Means, we propose, in accordance with the practice of the previous Administration and your Administration with respect to Congressional consideration of trade agreement implementing legislation, a schedule for consideration of a possible bill to implement the Canadian free trade agreement (FTA) the President intends to sign.

Unfortunately, in one respect the current situation has no direct counterpart in past practice, since there are only about 30 days remaining in the 90-day period provided in the law for consultation with appropriate Congressional committees. Full consultations on the actual text of the final agreement have not yet occurred because the Administration and the Government of Canada have not yet arrived at a final text. Given the Congressional schedule for the next few weeks, it is unlikely that full consultations can occur before January 2, 1988, the only day on which the Administration can sign the FTA under current law.

We strongly prefer a procedure which obligates the Administration not to sign trade agreements until Congress is given a chance for full and adequate consultations on the actual text of the agreement. The negotiating process undertaken in this case has not fulfilled our expectations about the extent of consultations with Congress during the 90-day notification period. This is regrettable, and we have every right to expect that it will not be repeated in future fast-track negotiations. The signing of an agreement before Congress has fully reviewed the text jeopardizes its chances for later approval under the fast track and creates doubts about the wisdom of fast-track procedures.

With respect to the Canada FTA, however, the issue now is what type of procedure we will follow after the agreement is signed. In this regard, we must point out that the Congressional schedule next year makes it unlikely that we will be able to complete action on a draft implementing bill before June 1, 1988. We therefore propose that the Administration not submit a bill to implement the FTA under expedited procedures earlier than June 1, 1988. If circumstances next year permit earlier action, we can by mutual agreement move up the date for introduction. We believe, however, that the timetable we have outlined will assure the greatest degree of cooperation from the Congress on this matter, and will enable us to take action on the bill before the end of the 100th Congress.

Sincerely yours,

Dan Rostenkowski
Chairman
House Committee on
Ways and Means

Lloyd Bentsen
Chairman
Senate Committee on Finance

B

Bello

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

December 22, 1987

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On December 4 we received the letter from you and Chairman Bentsen concerning Congressional review of the Free Trade Agreement negotiated with Canada. As you know, we expect the President to enter into this agreement on January 2. For the agreement to enter into force (as scheduled for January 1, 1989), we need implementing legislation.

We have consulted with Ways and Means Committee Members and staff and other interested Members of Congress on many occasions about these negotiations. These consultations occurred both before and after the President notified the Congress on October 3 of his intention to enter into an agreement on January 2, subject to the successful completion of negotiations. While there have been considerable time pressures on both the Congress and our negotiators, we appreciate the assistance and cooperation we received, which helped us to achieve the text of the Free Trade Agreement.

We look forward to working intensively with the Congress--and with the Ways and Means and Finance Committees in particular--on legislation to implement this agreement. We recognize that you have other items on your legislative agenda for 1988, and that a substantial amount of work needs to be completed prior to the President's formal submission to the Congress of the agreement, a draft implementing bill and various statements.

However, we are sure you recognize in turn that delaying such submission poses a substantial problem for smooth implementation of the Agreement. If we delay as you suggest, we cannot ensure that the implementing legislation will be voted on during the 100th Congress. We appreciate your assurances of a vote in the 100th Congress but, as you would expect, we remain troubled by the schedule you propose.

We want to discuss scheduling issues as soon as convenient. In the meantime, we assure you that we are quite mindful of the preparatory work necessary to make the fast track work, including

closed "non-markups" by Ways and Means and Finance as well as coordination with committee staff. We have no intention of recommending that the President submit the agreement and implementing bill at such an early date as to preclude a reasonable opportunity for advance cooperation with the Congress. We look forward to working with you to ensure that our preparatory work is undertaken and completed on a timely basis.

Sincerely,

Clayton Yeutter
U.S. Trade Representative

James A. Baker, III
Secretary of the Treasury

cc: The Honorable John J. Duncan

Bello

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

December 22, 1987

The Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On December 4 we received the letter from you and Chairman Rostenkowski concerning Congressional review of the Free Trade Agreement negotiated with Canada. As you know, we expect the President to enter into this agreement on January 2. For the agreement to enter into force (as scheduled for January 1, 1989), we need implementing legislation.

We have consulted with Finance Committee Members and staff and other interested Members of Congress on many occasions about these negotiations. These consultations occurred both before and after the President notified the Congress on October 3 of his intention to enter into an agreement on January 2, subject to the successful completion of negotiations. While there have been considerable time pressures on both the Congress and our negotiators, we appreciate the assistance and cooperation we received, which helped us to achieve the text of the Free Trade Agreement.

We look forward to working intensively with the Congress--and with the Finance and Ways and Means Committees in particular--on legislation to implement this agreement. We recognize that you have other items on your legislative agenda for 1988, and that a substantial amount of work needs to be completed prior to the President's formal submission to the Congress of the agreement, a draft implementing bill and various statements.

However, we are sure you recognize in turn that delaying such submission poses a substantial problem for smooth implementation of the Agreement. If we delay as you suggest, we cannot ensure that the implementing legislation will be voted on during the 100th Congress. We appreciate your assurances of a vote in the 100th Congress but, as you would expect, we remain troubled by the schedule you propose.

We want to discuss scheduling issues as soon as convenient. In the meantime, we assure you that we are quite mindful of the preparatory work necessary to make the fast track work, including

Suggested Talking Points for Call to Derek Burney

-- Derek, I want you to know I appreciate your candid assessment of the status of the Free Trade negotiations. Since we last spoke I have discussed this matter thoroughly with Frank Carlucci and Jim Baker.

-- I am sending you a cable today that will provide a more complete response to your letter. Let me just make a couple of points now:

- First, let me be as candid as you were. We understand the potentially historic significance of this Agreement and are 100% committed to exploring every avenue that could bring the FTA to fruition. The President is fully prepared to lend his full support to getting the agreement ratified in the Senate. There will be no shortage of the "political courage" you ask for.

- But, I can assure you that we will not lean on the negotiators to produce an agreement that is not commercially viable. Jim Baker, Frank Carlucci and I will continue to work with the President to insure that we examine all creative alternatives. I hope you will do the same.

Derek, again thanks for conveying your deep concerns on these negotiations.

THE WHITE HOUSE
WASHINGTON

11 Sept

Senator Baker,

This is what is being converted into a letter to Burney. It needs to be coordinated w/ USTR so it may not go out until this afternoon.

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Talking Points for Phone Call to Derek Burney

-- I have discussed your letter and phone call with Frank Carlucci who in turn has spoken at length with Jim Baker.

-- I want to assure you and the Prime Minister of the importance which the President and we attach to the successful completion of a Canadian-U.S. Free Trade Agreement. We regard this as a major bilateral undertaking which has the strong personal imprimateur of the President and Prime Minister. We also recognize the historic importance of making the most of this moment even in the face of an uncertain political environment -- in both countries.

-- Jim Baker has assured us that the EPC will be very closely monitoring the negotiating team and reporting to us on progress. Members of our personal staffs (NSC and West Wing) have been assigned to maintain daily contact with the process.

-- Your letter indicated that the bottom line issue for Canada is securing a rational agreement on the interrelationship between dispute settlement and subsidies. Our negotiators are prepared to discuss that question, but our team reports that we are hearing nothing creative from the Canadian side by way of meaningful commitments on subsidy discipline. That is a prerequisite to our ability to agree to or sell to Congress any notion of binding dispute settlement.

-- I also understand that there are still on the table a number of other issues of political import here in the U.S. which, if unresolved by the negotiators, could of themselves build a negative coalition sufficiently large to defeat the FTA in the Congress. I don't have to describe to you the present climate on trade here in Washington. We'll need to make substantial progress on those issues also.

If asked about specific issues which are of greatest threat to FTA fast-track approval, i.e., autopact, plywood, films, maritime, energy, investment:

-- I don't want to get into detail here. That's the job of the negotiators. I'm certain Peter Murphy has communicated those and, knowing the efficiency of your embassy and intelligence gathering here in Washington, I'm certain that your people know what they are. My point is that, in order to have a chance of selling any kind of compromise on the matter of subsidies and dispute settlement, we must make sure that these other matters are satisfactorily resolved.

-- In response to your suggestion that we tell you soon if the U.S. cannot meet your requirements, we prefer not to dwell on the possibility of failure at this juncture. Our negotiators are meeting this weekend, and we fully expect

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progress from those sessions. We ought to be talking instead about how we sell this historic arrangement to the Parliaments and provinces of both countries once we arrive at a meeting of the minds. I'll have some ideas on that point to share with you once we get to that moment.

SECRET

THE SECRETARY OF THE TREASURY
WASHINGTON

July 31, 1987

MEMORANDUM FOR HOWARD H. BAKER, JR.
FRANK C. CARLUCCI

FROM: JAMES A. BAKER, III

SUBJECT: July 10 Memo on Priority Issues

Thank you for sharing Peter Rodman's recent memo with me; I had only one possible addition. In the bullet on trade policy, I think you may wish to mention the US-Canada Free Trade Area negotiations.

I believe a comprehensive FTA with Canada would qualify as a "significant legacy" to complement the Uruguay Round initiatives. Otherwise, I thought the memo provided a thorough overview of significant issues.

SECRET

3/3/87

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SUGGESTED POINTS MR. BAKER MAY WISH TO RAISE AT NSC ON CANADA

-- Impressed by how complex our relationship with Canada is -- witness how many folks we have here all directly concerned with one aspect or the other of that relationship. Also struck by basically how solid this tie is, and especially the President's excellent working relationship with Brian Mulroney (MUHL-ROONEY). Clearly Canada is our most important and critical Ally.

-- On the acid rain question -- which you appropriately label the "litmus test" of our relationship, I'm not sure our discussions should focus on the extent to which we will advise the President to go along with the Lewis-Davis Report. The President told the PM he would live up to his commitment; our efforts should be directed to that end alone.

-- We need to solve the acid rain problem so that we can shift the thrust of this Summit to a more global perspective. Rather than a summit on irritants, this should be a meeting that showcases two of the Free World's leaders conferring on matters of international importance. We should treat this visit as part of our overall foreign policy agenda leading to the President's June trip to Europe and the Venice Economic Summit. I understand the PM got high marks for his recent trip to Europe and Africa, so let's turn the spotlight on those successes.

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State Hse Rm
luncheon
April 22
Citizens for America
less than 100
Picture

Start of
verifying

Bonnie McMann
talked
to Poindexter

Nov 29
I ms called McMann
wanted him
WH cannot call